76th Congress / HOUSE OF REPRESENTATIVES / Report
1st Session / No. 6

CONSOLIDATE AND CODIFY THE INTERNAL REVENUE LAWS OF THE UNITED STATES

January 20, 1939.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

MR. DOUGHTON, from the Committee on Ways and Means, submitted the following.

REPORT

[To accompany H. R. 2762]

The Committee on Ways and Means, to whom was referred the bill (H. R. 2762) to consolidate and codify the internal revenue laws of the United States, having had the same under consideration, unanimously report it back to the House without amendment and recommend that the bill do pass.

THE NEED OF AN INTERNAL REVENUE CODE

The need for enactment into absolute law of a codification of internal-revenue laws has long been recognized. The last such enactment was in 1874, when the Revised Statutes were adopted. If the need for enactment into law of a codification was recognized in 1874, when only 17 volumes of the Statutes at Large had been published and our internal revenue was derived almost entirely from

taxes on liquor and tobacco, that need must be much greater today, when 34 additional volumes have been published and our internal revenue is derived from more than a hundred separate sources.

The United States Code is itself the culmination of more than 30 years' effort. Due to the mass of legislation contained in that code, it was thought best by the Congress to put it through a testing period before its enactment into law. It was, therefore, made only prima facie evidence of the law, and scrutiny of it was invited for the purpose of correcting errors, eliminating obsolete matter, and restatement.

The review and correction of the internal-revenue title was begun by the staff of the Joint Committee on Internal Revenue Taxation after the enactment of the Revenue Act of 1928. The first edition of the work was published in 1930, and the second, in 1933. The second edition was substituted for title 26 of the United States Code and became, therefore, prima facie evidence of the law.

It has now been nearly 13 years since the United States Code was enacted as prima facie law and more than 8 years since the first edition of the internal-revenue code was published by the staff of the joint committee. However, because the internal-revenue title is not the law, but only prima facie evidence thereof, it cannot be relied upon and it is still necessary to go to the many volumes of the Statutes at Large to determine what the law actually is. The great mass of internal-revenue legislation since 1873, scattered through 34 volumes of the Statutes at Large, makes such a recourse an exceedingly difficult undertaking, even for the most experienced lawyer. Statutes are repeated in subsequent acts in almost identical language, with no reference to prior acts or any expressed intention to amend or repeal. Provisions of a permanent character are included in riders and provisos and are hidden in various acts. Amendments are often involved and obscure. Inconsistencies and duplications abound.

The only practical way to determine with certainty that the internal-revenue code is actually the law is to enact it, as was done with the Revised Statutes in 1873. It is believed that it has had a sufficient testing period to make it acceptable as free from error.

In the preparation of this edition valued aid has been rendered by the Treasury Department. The work performed there has been under the immediate supervision and direction of Mr. Preston C. Alexander, chairman of the Chief Counsel's Committee, and Mr. Wallace Streater, of the Interpretative Division. The original work of comparing the text of the code with the basic law was divided among some 25 or 30 attorneys in the Chief Counsel's office, whose recommendations passed through the respective division heads or their assistants to Messrs. Alexander and Streater for the final review. Appreciation is expressed of the services of all who collaborated, whose number is too large to permit the mention here of each by name.

Grateful acknowledgment is also made of helpful suggestions received from the Department of Justice.

In this connection, Mr. James W. Morris, Assistant Attorney General, made the following comment as to the desirability of the enactment of this codification into law:

> I am glad to learn that the long-realized need of a codification which will be recognized as the law rather than as merely prima facie evidence thereof is probably soon to be filled. This need has been especially impressed upon the Tax Division of the Department of Justice inasmuch as the function of handling revenue litigation rests with it.
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> It is evident that the confusion existing by reason of the number of revenue acts, containing in many instances the same basic provisions, to which reference must be made in the handling of cases arising under the various acts, constitutes a burden to the courts and counsel alike. Furthermore, several of these statutory provisions have been amended by Executive

order, but, since such changes have not appeared on the face of the statutes it has been necessary to refer to the Executive orders to ascertain their nature and extent. The proposed codification will be particularly helpful in that it eliminates these sources of confusion.

I am confident that the enactment of the codification will be a definite step toward obtaining clarity, certainty, and simplicity in our revenue laws and will be of substantial aid to this division in the handling of revenue litigation.

EXPLANATION OF THE CODE

This code contains all the law of a general and permanent character relating exclusively to internal revenue in force on January 2, 1939. In addition, it contains the internal-revenue law relating to temporary taxes, the occasion for which arises after the enactment of the code. The following should be noted in connection with the general character of the code:

First. It makes no changes in existing law.

Second. It makes liberal use of catchwords, headlines, different types, indentations, and other typographical improvements.

Third. By a system of cross references, it correlates not only its own provisions but also provisions of the United States Code not relating exclusively to internal revenue.

Fourth. To obviate confusion with the law itself, the cross-references are in type different from that containing the law.

Fifth. It is arranged with a view of giving prominence

to matters which concern the ordinary transactions of the ordinary classes of taxpayers.

The preparation of this code began with the collection and examination of all original statutes relating to internal revenue, without reference to the United States Code. This procedure allowed an independent check to be made subsequently against that code. The next step was the elimination of obsolete matter and those temporary provisions relating to taxes the occasion for which arose prior to the effective date of the code. The most striking examples of the temporary laws which are omitted are the income-tax provisions of the Revenue Act of 1936 and prior revenue acts. While these provisions remain in force for the purpose of administering the taxes for the earlier years, they do not affect the current tax situation.

After the elimination of the obsolete and temporary provisions from the whole body of internal-revenue law, the remaining provisions were checked against the United States Code. The care in the preparation of the United States Code and in the present codification gives assurance of the accuracy of the final product. Moreover, every provision has been carefully reviewed and checked by the Treasury Department and conferences have been held and agreements reached on all issues.

There are many laws of a general character which, though relating to internal revenue, apply also to other objects. To codify such laws under internal revenue, however, would disrupt the entire title structure of the United States Code and render complete codification of Federal law impossible. In only a few instances has any provision been taken from any title of the United States Code other than the internal-revenue title, and then only for the reason that such provision relates exclusively to internal revenue. The great value of the United States Code is thus preserved. Moreover, detailed cross-references compensate for any deficiency due to such a procedure by acquainting

the reader both with the general subject of the provision referred to and its location in the United States Code.

The final step was to arrange the code in a logical and convenient manner. There are six subtitles. Subtitle A contains those taxes over which the United States Board of Tax Appeals has jurisdiction. These include income, estate, and gift taxes.

Subtitle B contains the miscellaneous taxes.

Subtitle C contains the temporary taxes.

Subtitle D contains the general administrative provisions.

Subtitle E contains the personnel provisions.

Subtitle F contains provisions relating to the Joint Committee on Internal Revenue Taxation.

The purpose of this arrangement is to make the subtitles as far as possible complete in themselves. For example, those interested solely in provisions relating to income, estate, or gift taxes need concern themselves only with subtitles A and D, and may disregard the provisions relating to tobacco, liquor, and other miscellaneous taxes, which are included in subtitle B, as well as the provisions relating to temporary taxes, in subtitle C. In subtitle D, all general administrative provisions have been collected.

The chapter arrangement is based both upon the importance of the tax from a revenue standpoint and the number of persons affected. The plan for the arrangement of provisions in the income-tax chapter follows the Revenue Act of 1938 and consists of the collection of the provisions under two classifications, general provisions and supplemental provisions. The general provisions are those which apply to the ordinary transactions of the ordinary classes of taxpayers. In the main, the supplemental provisions are those which apply to the extraordinary classes of taxpayers or to the extraordinary transactions of the ordinary classes of taxpayers. Special administrative provisions are included in the supplemental provisions. This same scheme is applied to the chapters on the estate and gift taxes. The chapter on the United States Board of Tax Appeals is in-

cluded in subtitle A for the reason that the jurisdiction of the Board is confined to the taxes in that subtitle.

Subtitle B contains the miscellaneous taxes, such as the employment taxes arising under the Social Security Act and the Carriers Taxing Act of 1937, the taxes on tobacco and liquor, admissions and dues, issues and transfers of stocks, issues of bonds, etc. The arrangement of these chapters gives prominence to matters of chief interest to the taxpayer; that is, liability to tax, rate, payment, and other obligations and duties imposed upon the taxpayer. The special administrative provisions follow and the penalty and forfeiture provisions are grouped together so as to be readily located.

In subtitle C the temporary taxes are included. Among those are the manufacturers' excise taxes, the tax on telegraph and telephone messages, and the tax on electrical energy, which by express provision of the law expire on a specified date.

Subtitle D contains the administrative provisions of a general character. The arrangement of this subtitle follows the usual course of procedure in tax administration —that is, information, returns, assessment, collection, and refund.

Subtitle E contains the provisions relating to personnel. The provisions relating to appointment, salary, powers, and duties of internal-revenue officials and employees are logically and systematically arranged.

CALENDAR NO. 19

76th Congress, 1st Session | SENATE | Report No. 20

CONSOLIDATE AND CODIFY THE INTERNAL REVENUE LAWS OF THE UNITED STATES.

January 30, 1939—Ordered to be printed

MR. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 2762]

The Committee on Finance, to whom was referred the bill (H. R. 2762) to consolidate and codify the internal-revenue laws of the United States, having had the same under consideration, unanimously report it back to the Senate without amendment and recommend that the bill do pass.

DESCRIPTION OF THE CODE

This code contains all the law of a general and permanent character relating exclusively to internal revenue in

force on January 2, 1939. In addition, it contains the internal revenue law relating to temporary taxes, the occasion for which arises after the enactment of the code. The following should be noted in connection with the general character of the code.

First. It makes no changes in existing law.

Second. The code will be the law and not merely prima facie evidence thereof. This will give a new starting point behind which it will not be necessary to search to determine the law as to current taxes. It will then be necessary only to look to subsequent legislation, which would be amendatory of the code itself.

Third. The code is prospective in its application. For example, in the case of the income tax, the code applies only to taxable years beginning after December 31, 1938. In the case of taxable years beginning prior to January 1, 1939, the income-tax provisions of the code will have no application, but the applicable provisions of the Revenue Act of 1938 and prior revenue acts will govern. In the case of the estate tax, the code will apply only to estates of decedents dying after the date of its enactment, the existing revenue acts continuing to apply to estates of decedents dying on or prior to such date. In the case of the gift tax, the code will apply only to the calendar year 1940 and subsequent calendar years, leaving such taxes for prior calendar years to be governed by the applicable provisions of the Gift Tax Act of 1932. In the case of the Social Security taxes, the code will apply to the calendar year 1939 and subsequent calendar years, leaving the prior years still under the Social Security Act.

As to the existing temporary taxes, the code applies only where the occasion for the tax arises after the effective date specified in the code. For instance, the code will

apply to automobiles sold on and after the first day of the calendar month occurring next after its enactment and automobiles sold prior to that date will be subject to the provisions of the Revenue Act of 1932. Also, the code will apply to sugar manufactured on or after the first day of that calendar month occurring next after the enactment of the code, but in the case of sugar manufactured prior to that date, the existing law will apply. The following table shows the effective date of the various chapters of the code:

Chapter	Subject	Application or effective date
1	Income tax	Taxable years beginning after Dec. 31, 1938.
2	Additional income taxes:	
	Personal holding companies	Do.
	Excess-profits tax	Income-tax taxable years ending after June 30, 1939.
	Excess profits on Navy contracts	Contracts completed within income-tax taxable years beginning after Dec. 31, 1938.
	Unjust enrichment	Taxable years ending during the calendar year 1939, and subsequent taxable years.
3	Estate tax	Estates of decedents dying after the date of the enactment of the Code.
4	Gift tax	Calendar years 1940 and subsequent calendar years:
5	Board of Tax Appeals	The day following the date of the enactment of the Code.
6	Capital-stock tax	Year ending June 30, 1939, and subsequent years.

Chapter	Subject	Application or effective date
7	Tax on transfers to avoid income tax	The day following the date of the enactment of the Code.
8	Alaskan railroads tax	Taxable years beginning after Dec. 31, 1938.
9	Employment taxes	Calendar year 1939 and subsequent calendar years.
10	Admissions and dues	First day of the first calendar month beginning after the enactment of the Code.
11	Documents, other instruments, and playing cards.	The day following the date of the enactment of the Code.
12	Safe-deposit boxes	First day of the first calendar month beginning after the enactment of the Code.
13	Circulation other than of national banks.	June 1, 1939.
14	Cotton futures	The day following the date of the enactment of the Code.
15	Tobacco, snuff, cigars, and cigarettes.	Do.

Chapter	Subject	Application or effective date
16	Oleomargine, adulterated butter, and process or renovated butter	Do.
17	Filled cheese	Do.
18	Mixed flour	Do.
21	Coconut and other vegetable oils	First day of the first calendar month beginning after the enactment of the code.
22	Fish, animal, and vegetable oils	Do.
23	Narcotics	Do.
24	White phosphorous matches	Do.
25	Firearms:	
	Pistols and revolvers	Do.
	Machine guns and short-barreled firearms.	The day after the date of the enactment of the code.
26	Liquor	Do.
27	Occupational taxes	Taxable years beginning on or after the day following the enactment of the code.
28	Provisions common to miscellaneous taxes.	The day following the date of the enactment of the code.
29	Manufacturers' excise and import taxes:	

Chapter	Subject	Application or effective date
	Excise taxes	The first day of the first calendar month beginning after the enactment of the code.
	Import taxes	The day following the date of the enactment of the code.
30	Transportation and communication	The first day of the first calendar month beginning after the enactment of the Code.
31	Documents and other instruments	The day following the date of the enactment of the Code.
32	Sugar:	
	Manufacture	The first day of the first calendar month beginning after the enactment of the Code.
	Importation	The day following the date of the enactment of the Code.
33	Coal	The first day of the first calendar month beginning after the enactment of the Code.

Chapter	Subject	Application or effective date
34	Information and returns	The day following the date of the enactment of the Code.
35	Assessment	Do.
36	Collection	Do.
37	Abatements, credits, and refunds	Do.
38	Miscellaneous provisions	Do.
39	The Office of the Commissioner of Internal Revenue.	Do.
40	The Office of the Assistant General Counsel for the Bureau of Internal Revenue.	Do.
41	Collectors of internal revenue	Do.
42	Deputy collectors of internal revenue	Do.
43	Internal-revenue agents	Do.
44	Storekeeper-gagers	Do.
45	Internal-revenue inspectors	Do.
46	Miscellaneous provisions	Do.

Fourth. The Code will not have any effect upon pending cases, suits, or controversies. All existing rights and liabilities are preserved.

Fifth. The Code repeals only such laws and parts of laws as are codified therein. It is believed that this Code, which is the result of intensive research extending over a period of 10 years, admits no reasonable doubt of its accuracy, but if it should develop that any provision has been improperly omitted, such provision is not repealed, but still remains the law. Likewise, temporary and obsolete provisions which are omitted from the Code are not repealed by it. Moreover, no provision of law corresponding to that contained in the Code is repealed until the corresponding Code provision becomes effective.

Sixth. If any error is found in the Code, it can be remedied by amendatory legislation. Conceding the possibility of error, it is the opinion of your committee that the interests of the Government and the taxpayer alike would be best served by the adoption of the Code as absolute law and the legislative correction of any errors that may be found in it. Such a procedure would be far less burdensome upon the parties concerned than the making of the code prima facie law, thereby subjecting it to rebuttal upon the production of the original statute. This last procedure would compel both the Government and the taxpayer to make a thorough search of the numerous Statutes at Large in every case to establish that the prima facie law was in fact the law, thereby resulting in perpetuating the confusion which increases with each new edition of the Statutes at Large.

Seventh. The Code makes liberal use of catchwords, headlines, different types, indentations, and other typographical improvements.

Eighth. To obviate confusion with the law itself, the

cross-references in the Code are in type different from that containing the law.

Ninth. The Code is arranged with a view of giving prominence to matters which concern the ordinary transactions of the ordinary classes of taxpayers.

The internal-revenue laws were first codified in the Revised Statutes of 1873, title XXXV, which was made absolute law. A perfected edition of the Revised Statutes was prepared in 1878, but is only prima facie, not absolute, law. In the years 1897 to 1907 a commission was engaged by Congress to codify the Federal laws, but the work was never completed. Subsequently, Hon. Edward C. Little prepared a codification of Federal laws which was embodied in a bill which passed the House of Representatives but failed of action in the Senate. The internal-revenue laws were again codified in title 26 of the United States Code, which was enacted as prima facie law in 1926. Scrutiny of the Code was invited in its preface for the purpose of correcting errors.

In 1930 the Joint Committee on Internal Revenue Taxation published a complete substitute for title 26 of the United States Code, containing all the law of a permanent character, relating exclusively to internal revenue, in force on December 1, 1930. This was not a mere duplication of the old title, for, in addition to correcting errors and eliminating obsolete matter, certain omitted provisions were added and the title completely rearranged in a manner considered logical and useful.

In 1933 a new edition was published containing the internal-revenue laws in force on July 16, 1932. This edition was substituted for title 26 of the United States Code, and in its present form is prima facie law. A third edition was published in 1938, containing the internal-revenue laws in force at the beginning of that year. The staff of the Joint Committee on Internal Revenue Taxation, with the co-

operation and assistance of the Treasury Department, has brought the internal-revenue code up to date by the present edition.

It has now been nearly 13 years since the United States Code was enacted as prima facie law and more than 8 years since the first edition of the internal-revenue code was published by the staff of the joint committee. However, because the internal-revenue title is not the law, but only prima facie evidence thereof, it cannot be relied upon and it is still necessary to go to the many volumes of the Statutes at Large to determine what the law actually is. The great mass of internal-revenue legislation since 1873, scattered through 34 volumes of the Statutes at Large, makes such a recourse an exceedingly difficult undertaking, even for the most experienced lawyer.

The only practical way to determine with certainty that the internal-revenue code is actually the law is to enact it, as was done with the Revised Statutes of 1873. It is believed that it has had a sufficient testing period to make it acceptable as free from error.

In the preparation of this edition valued aid has been rendered by the Treasury Department. The work performed there has been under the immediate supervision and direction of Mr. Preston C. Alexander, chairman of the Chief Counsel's Committee, and Mr. Wallace Streater, of the Interpretative Division. The original work of comparing the text of the code with the basic law was divided among some 25 or 30 attorneys in the Chief Counsel's office, whose recommendations passed through the respective division heads or their assistants to Messrs. Alexander and Streater for the final review. Appreciation is expressed of the services of all who collaborated, whose number is too large to permit the mention here of each by name.

Grateful acknowledgment is also made of helpful suggestion received from the Department of Justice.

In a letter to Hon. Pat Harrison, chairman of the Joint Committee on Internal Revenue Taxation, dated December

22, 1938, Mr. James W. Morris, assistant attorney general, stated:

Department of Justice,
Washington, December 22, 1938.

HON. PAT HARRISON,
Chairman, Joint Committee on Internal Revenue Taxation, Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: In a recent conversation with Mr. Stam, chief of the staff of the joint committee, I was advised of the progress of the proposed codification of the revenue laws which has been undertaken by the committee.

I am glad to learn that the long realized need of a codification which will be recognized as the law rather than as merely prima facie evidence thereof is probably soon to be filled. This need has been especially impressed upon the Tax Division of the Department of Justice inasmuch as the function of handling revenue litigation rests with it.

It is evident that the confusion existing by reason of the number of revenue acts, containing in many instances the same basic provisions, to which reference must be made in the handling of cases arising under the various acts, constitutes a burden to the courts and counsel alike. Furthermore, several of these statutory provisions have been amended by Executive order, but, since such changes have not appeared on the face of the statutes it has been necessary to refer to the Executive orders to ascertain their nature and extent. The proposed codification will be particularly helpful in that it eliminates these sources of confusion.

I am confident that the enactment of the codification will be a definite step toward obtaining clarity, certainty, and simplicity in our revenue laws and will be of substantial aid to this Division in the handling of revenue litigation.

The staff of the joint committee deserves to be commended for its valuable contribution to the tax law.

Very truly yours,

JAMES W. MORRIS,

Assistant Attorney General.

In a letter from George M. Morris, Esquire, Chairman of the Standing Committee on Federal Taxation of the American Bar Association, dated January 24, 1939, Mr. Morris said:

> An examination of the codification of the Internal Revenue Laws as prepared by the staff of the Joint Committee on Internal Revenue, indicates that a highly sensible idea has been brought to a most satisfactory fruition.
>
> Unless one has had experience handling questions which involve the statutes treating with our internal revenue, for a span of years (not at all an unusual experience in tax disputes), he can have little idea of the difficulty of achieving certainty as to what the applicable statute law is. If for taxpayers and their counsel these difficulties and uncertainties can be eliminated, the reduction of expense of tax controversies, and even the elimination of such controversies, should be greatly furthered.
>
> Not only does it seem highly advisable that this painstakingly prepared codification should be enacted into law but it should be apparent that the sooner such action is taken the more beneficial will be the effect, particularly in the consideration of any revenue legislation during the present session of Congress. An intelligent consideration of any proposal for change would seem to require an assured knowledge of the law which it is proposed to change.